I.

JURISDICTION.

As to cases No. 456, De Lima et al. v. Bidwell, and No. 507, Downes v. Bidwell.

Opposing counsel are driven in their several briefs on the subject of jurisdiction to take such divergent, inconsistent, and irreconcilable positions that the indulgence of the court is asked for a somewhat further examination of the subject.

The collecting officer of the Government, upon the arrival of the goods at the port of destination and their *entry* there by the importer, was justified and in duty bound under the law to regard them as imports, to assess and collect duty thereon, and to deposit the amount thereof in the Treasury. For thus acting as the law requires he is indemnified against personal suit by section 25 of the customs administrative act of June 10, 1890. In exempting the collector from suit for any act done by him as collector, the United States assumes responsibility for any error on his part in the wrongful or illegal exacting of duties. It has permitted itself, under certain conditions, to be sued for the recovery of such duties. Without a compliance with the conditions imposed no suit can be maintained, nor can the United States be sued in any other way than it permits. If the collector can not be sued directly

for his official act, or the United States at all unless in the way it permits, it can not be done indirectly. The act of the collector, done in pursuance of his official authority, and in accordance with his interpretation of the law or the instructions of his official superiors, is his official act. He does not perform it as an individual, but as an officer. The exemption of the collector from personal suit, or the United States from suit at all, unless in the way it permits, can not be overcome and the same result accomplished simply by the setting up of a claim by the importer. The assertion of the importer that the collector acted without authority of law (notwithstanding the fact of the *entry* of the goods and the admission thereby that they are imported), because the goods are not in fact imports, can not be permitted to subvert the system of customs collection.

In the *Fassett case* (142 U. S., 479) the vessel in controversy was claimed not to be an imported article. It was not entered. The collector seized it to enforce the payment of the duty claimed. Being maritime in character, a libel, the proper admiralty proceeding, was brought to secure its release. In like manner if, as counsel contend, the customs administrative act pro vides no remedy in these cases, the importer should have refused to make entry of the goods at the port of destination, and on the ground that the articles were not in fact imported, deny the right of the collector to exact duty thereon. If then the collecting officer should seize and detain the goods to compel payment

of the duties claimed by him to be payable, a proceeding would lie to release them. Section 934 of the Revised Statutes would not be a bar to any such action. That section is as follows:

> All property taken or detained by any officer or other person, *under authority of any revenue law* of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof.

If the opposing contention is correct, the property seized by the collector to compel the payment of duty would not be "property taken or detained" "under authority of any revenue law of the United States," because no revenue law or any other law could, in that view, invest him with such authority. The section has reference only to goods which are subject to customs duty and are taken or detained to compel payment thereof.

As to cases No. 456, De Lima et al. v. *Bidwell, and No. 507, Downes* v. *Bidwell.*

In the main brief in the case of *De Lima* v. *Bidwell*, No. 456, it is stated, at page 8, that—

> The "remedy" and the "procedure" provided by the customs administrative act of June 10, 1890, have no application whatever to and *are not available* in cases which (like the present) *are not customs cases at all* (the merchandise not having been imported).

Notwithstanding this admission that the De Lima case is not a *customs* case (and it would seem to apply as well to the Downes case), the same counsel in the Brief in Reply in Nos. 456 and 507, and in the Supplemental Brief in No. 507, rest the jurisdiction of the lower court upon subdivision 4 of section 629 of the Revised Statutes, which is claimed to confer jurisdiction upon the circuit court in "all suits at law or in equity arising under any act providing for *revenue* from imports or tonnage."

Counsel contend that these cases are not revenue cases, and yet they endeavor to maintain jurisdiction under a revenue statute. In other words, *for the purpose of getting here the cases are not revenue cases, but for the purpose of staying here they are.*

What constitutes a "revenue" case? It is clearly one which arises out of the collection of the revenue of the Government. Whether the goods in question in these cases are "imports" or not, the cases are *revenue* cases because they are brought to recover moneys collected by the officers of the United States, and turned into the Treasury as a part of the revenue of the Government.

Revenue cases are of several classes—customs, internal revenue, etc. If these are not customs cases, it would tax the ingenuity of counsel to suggest any other class of revenue cases to which they belong. They are customs-revenue cases. In a customs-revenue case there is now no implied contract on the part of the collecting officer to return the amount collected by him

if the collection was not warranted by law. He is required to pay into the Treasury the moneys received by him in the exercise of his authority. If the only way authorized by Congress to secure its return does not give relief, the application should be to the legislature and not to the judiciary.

It is submitted that jurisdiction in these two cases does not lie under subdivision 4 of section 629 of the Revised Statutes; that that section has been superseded by the customs administrative act. So far as the method of procedure is concerned, the act of 1890 established an exhaustive and exclusive method. The necessities of their case requiring them to disregard the customs administrative act, counsel make the mistake of assuming that because they claim a right some other remedy than under its provisions must exist. If the collector exacted duties illegally, a wrong has been done; but it does not necessarily follow that for the wrong there is a remedy. The customs administrative act was intended by Congress to cover the entire field of customs revenue collection and the procedure for the refunding of moneys improperly collected thereunder. Doing so, it superseded, if it did not impliedly repeal by section 29, all other previous and inconsistent provisions of law. While repeals by implication are not favored, "Yet if the later act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." (*The Paquete Habana*, 175 U. S., 685.)

If the contention of the plaintiffs in error is correct, and the collector may be sued personally in a case of this character, it would follow that importers have a choice of remedies, and may either proceed in accordance with the customs administrative act to obtain the refund of duties illegally exacted or, on the ground that the action of the collector was not warranted by law and that the duties were illegally collected, bring a personal action like the present against him, on the ground that he impliedly contracted to return the amount exacted. It is submitted that such a result was never contemplated by Congress.

As to the Dooley Cases, Nos. 501 and 502, and the Armstrong Case, No. 515.

In the brief on jurisdiction in cases Nos. 501 and 502 counsel say:

> These cases are, therefore, in the nature of actions for money had and received, and come within the decisions in *Medbury* v. *United States*, 173 U. S., 492 at 498, and *Swift Co.* v. *United States*, 111 U. S., 22 at 28.

The Medbury Case was one arising under the land laws of the United States, while the Swift Case related to internal revenue. It is submitted that these decisions have no application whatever to customs-revenue cases, in which both law and method of procedure are different.

In *Arnson* v. *Murphy* (109 U. S., 240, 243) this court, in an opinion by Mr. Justice Matthews, traces the his-

tory of actions to recover back customs duties, as follows:

> The common-law right of action to recover back money illegally exacted by a collector of customs as duties upon imported merchandise rested upon the implied promise of the collector to refund money which he had received as the agent of the Government, but which the law had not authorized him to exact; which had been unwillingly paid, and which, before payment to his principal, he had been notified he would be required to repay; and involved a corresponding right on his part to withhold from the Government, as an indemnity, the fund in dispute. The manifest public inconveniences resulting from this situation induced Congress, by the act of March 3, 1839 (ch. 82, 5 Stat., 348, sec. 2), to alter the relation between these officers and the United States by requiring them peremptorily to pay into the Treasury all moneys received by them officially, without regard to claims for erroneous and illegal exactions. It was provided, however, therein, that the Secretary of the Treasury himself, on being satisfied that, in any case of duties paid under protest, more money had been paid to the collector than the law required, should refund the excess out of the Treasury. The legal effect of this enactment, as was held in *Cary* v. *Curtis* (3 How., 236), was to take from the claimant all right of action against the collector, by removing the ground on which the implied promise rested. Congress, being in session at the time that decision was announced, passed the explanatory act of February 26,

1845, which, by legislative construction of the act of 1839, restored to the claimant his right of action against the collector, but required the protest to be made in writing at the time of payment of the duties alleged to have been illegally exacted, and took from the Secretary of the Treasury the authority to refund conferred by the act of 1839 (5 Stat., 349, 727). This act of 1845 was in force, as was decided in *Barney* v. *Watson* (92 U. S., 449), until repealed by implication by the act of June 30, 1864 (13 Stat., 214). The fourteenth section of the act last mentioned is, as already cited, in substance the present section 2931 of the Revised Statutes, providing for the appeal to the Secretary of the Treasury, and the sixteenth section, being the present section 3012½, Revised Statutes, restores to the Secretary of the Treasury the authority to refund moneys paid under protest and appeal, which he shall be satisfied were illegally exacted, originally conferred upon him by the act of 1839. And the provision of the act of 1845, which construed the act of 1839 so as to restore to the claimant the right of action, judicially declared in *Cary* v. *Curtis*, *supra*, to have been taken away by the latter, now appears as section 3011 of the Revised Statutes.

Section 3011 of the Revised Statutes is as follows:

> Any person who shall have made payment under protest and in order to obtain possession of merchandise imported for him, to any collector or person acting as collector of any money as duties, *when such amount of duties was not*, or was *not wholly, authorized by law, may*

maintain an action in the nature of an action at law, which shall be triable by jury, to ascertain the validity of such demand and payment of duties and to recover back any excess so paid. But no recovery shall be allowed in such action unless a protest and appeal shall have been taken, as prescribed in section twenty-nine hundred and thirty-one.

If the contention of the other side is correct, the duties collected in these cases were not "authorized by law," and under this section, if it were still in operation, suit could be brought against the collector to ascertain the validity of the demand for the payment of the amount of duties collected by him. But section 3011 was repealed by section 29 of the act of June 10, 1890 (*Schoenfeld* v. *Hendricks*, 152 U. S., 693), and has been superseded by sections 15 and 25 of that act, the former providing the method of procedure and the latter withdrawing the right to sue the collector personally. This act, the Government contends, established an exclusive system for the collection of customs revenue and for the recovery of any duties alleged to have been illegally collected

In answer to the contention of the defendants that neither the Court of Claims nor the United States circuit court has jurisdiction of these claims because they sound in tort, and are therefore expressly excluded from the jurisdiction of those courts by the terms of the Tucker Act, under which the actions are brought, the claimants assert that there is "positively no tort involved." But the facts, as alleged by the claimants,

speak for themselves. They are, in substance, that certain officers and agents of the United States, without warrant of law and in violation of the constitutional rights of the claimants, seized their goods upon entry of the same at the harbor of Ponce, Porto Rico, and demanded the payment of certain duties thereon, threatening to retain possession of the goods and to sell them for the collection of the duties thus demanded; that the claimants paid these exactions because of the duress thus exercised and in order to obtain possession of their goods, and that the money thus extorted from the claimants was thereafter paid into the Treasury of the United States. The facts thus alleged are tortious beyond any controversy. This court has held, in the analogous case of *In re Fassett* (142 U. S., 479), that a similar seizure of the property of the claimant for a like purpose by a United States collector of customs (it appearing that the property seized was not imported) constituted a tort.

Is the unquestioned fact that the amounts claimed in these actions were tortiously exacted from the claimants done away with by the further fact that the sums thus exacted were subsequently paid into the United States Treasury? The claimants have favored us with no argument upon this proposition. When analyzed, it amounts to the contention that the tort may be waived and an action brought as upon an implied contract. To be sure, this doctrine finds support in some of the earlier decisions of the Court of Claims, which have been cited by counsel for the

claimants, but those decisions have never received the sanction of this court, and in *Hill* v. *The United States* (149 U. S., 598) the court holds directly otherwise. In the later cases of *Ingram and Foster* (32 C. Cls. R.), cited in behalf of claimants, this question was not involved. Counsel for claimants rely upon the following decisions of this court:

Lawson, 101 U. S., 164; *Campbell*, 107 U. S., 407; *Swift & Co.*, 111 U. S., 22; *Steamship Company* v. *Emigration Commissioners*, 113 U. S., 33; *Mosby*, 133 U. S., 273; *Medbury*, 173 U. S., 492.

A discussion of the facts in these cases does not seem called for, as it is perfectly clear that the question of jurisdiction herein under discussion was in no sense involved in any of them. In the case of the *Steamship Company* v. *Emigration Commissioners*, it is true that illegal exactions similar to those set forth by claimants herein were complained of, but it is very significant that the action was brought against the emigration commissioners, and that no attempt was made, as in this case, to bring suit against the United States in the Court of Claims.

In the Mosby case, which counsel for Armstrong states is on all fours with the case under consideration, there was no intimation of any element of tort, but the important question was that of voluntary payment. The same is true of the Lawson case.

It is true that the facts in the case of *Sherman* v. *The United States* (178 U. S., 150) are very similar to those in the present cases, but the question of jurisdiction

was not raised in that case, and therefore was in no-wise determined.

The case of *Bank* v. *Bank* (6 Pet., p. 8,) was an action between private parties, hence the principle of law therein announced must be taken to have been uttered as applying to cases between private parties only.

II.

WHEN A TREATY TAKES EFFECT.

Mr. Carlisle insisted that the transfer of sovereignty, under the decisions of this court, takes place in the case of conquered territory at the date of the conquest and in the case of territory ceded after purchase, at the date of the treaty. And in support he cites *United States* v. *Reynes* (9 How., 127), *Davis* v. *Police Jury of Concordia* (9 How., 280), *Alexander* v. *Roulet* (13 Wall., 386), and other cases.

But these were all cases where there was an attempt to grant a title to a portion of ceded or conquered territory after it had passed beyond the control of its former sovereign. Obviously, after we had conquered Porto Rico, and after Spain, by the signing of the protocol, had agreed to cede Porto Rico to us upon the conclusion and ratification of a treaty of peace, Spain no longer had authority to grant a title to land or to grant a public franchise in Porto Rico. But although this was true, the Spanish municipal law, including customs regulations, continued in force, subject to modification by the President, acting under belliger-

ent right, until, after a cession by treaty, Congress should legislate for the new territory.

In the case of *Davis* v. *Police Jury of Concordia*, cited by Mr. Carlisle, the court, speaking by Mr. Justice Wayne, said (9 How., 289):

> It is true that in a treaty for the cession of territory its national character continues for all commercial purposes; but full sovereignty, for the exercise of it, does not pass to the nation to which it is transferred until actual delivery. But it is also true that the exercise of sovereignty by the ceding country ceases, except for strictly municipal purposes, especially for granting lands.

Here the distinction is clearly drawn between commercial, which includes customs purposes, and the purpose of granting lands.

So, in the much-cited case of *Cross* v. *Harrison* (16 How., 164), the court, speaking by Mr. Justice Wayne, said (p. 190):

> California, or the port of San Francisco, had been conquered by the arms of the United States as early as 1846. Shortly afterwards the United States had military possession of all of Upper California. Early in 1847 the President, as Constitutional Commander in Chief of the Army and Navy, authorized the military and naval commander of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage as military contributions for

> the support of the government, and of the army which had the conquest in possession. * * * No one can doubt that these orders of the President, and the action of our army and navy commander in California, in conformity with them, was according to the law of arms and the right of conquest, or that they were operative until the ratification and exchange of a treaty of peace.

Now, the conquest of California by the United States is regarded as having become complete on the 7th of July, 1846, at which time the authority of the Mexican governor to make alienations of the public domain within the conquered territory ceased. (*Stearns* v. *United States*, 6 Wall., 589, 590.) Nevertheless, the authority of the United States to govern the conquered territory and to collect customs duties therein was in full force. For the very reason that it was in full force, the authority of Mexico to alienate the public domain had ceased to exist.

In *Haver* v. *Yaker* (9 Wall., 32) certain Swiss aliens claimed real estate in Kentucky as heirs, by virtue of certain provisions of a treaty between Switzerland and this country, although the law of Kentucky prohibited aliens from taking real estate by inheritance. The Swiss claimed that the treaty took effect from the date of its signature, so as to make them competent to inherit. The court held, however, that the treaty did not take effect until the ratifications were exchanged, Mr. Justice Davis, speaking for the court, saying (p. 34):

It is undoubtedly true, as a principle of international law, that, as respects the rights of either Government under it, a treaty is considered as concluded and binding from the date of its signature. In this regard the exchange of ratifications has a retroactive effect, confirming the treaty from its date. But a different rule prevails where the treaty operates on individual rights. The principle of relation does not apply to rights of this character, which were vested before the treaty was ratified. In so far as it affects them, it is not considered as concluded until there is an exchange of ratifications, and this we understand to have been decided by this court in Arredondo's case, reported in 6th Peters. The reason of the rule is apparent. In this country, a treaty is something more than a contract, for the Federal Constitution declares it to be the law of the land. If so, before it can become a law, the Senate, in whom rests the authority to ratify it, must agree to it. But the Senate are not required to adopt or reject it as a whole, but may modify or amend it, as was done with the treaty under consideration. As the individual citizen, on whose rights of property it operates, has no means of knowing anything of it while before the Senate, it would be wrong in principle to hold him bound by it, as the law of the land, until it was ratified and proclaimed. And to construe the law so as to make the ratification of the treaty relate back to its signing, thereby divesting a title already vested, would be manifestly unjust, and can not be sanctioned.

III.

THE SPIRIT OF THE CONSTITUTION.

In view of the stress laid upon "the spirit of the Constitution" by opposing counsel, not inappropriate for consideration are the words of Mr. Justice Miller in *Hepburn* v. *Griswold* (8 Wall., 603, 638):

> This whole argument of the injustice of the law, an injustice which, if it ever existed, will be repeated by now holding it wholly void; and of its opposition to the spirit of the Constitution, is too abstract and intangible for application to courts of justice, and is, above all, dangerous as a ground on which to declare the legislation of Congress void by the decision of a court. It would authorize this court to enforce theoretical views of the genius of the Government, or vague notions of the spirit of the Constitution and of abstract justice, by declaring void laws which did not square with those views. It substitutes our ideas of policy for judicial construction, an undefined code of ethics for the Constitution, and a court of justice for the national legislature.

Although this language was used in a dissenting opinion, the views of the minority were subsequently adopted as the conclusion of the court in the *Legal Tender cases* (12 Wall., 457), and in the *Legal Tender case* (110 U. S., 421). It was in the last-named case that Mr. Justice Gray, speaking for the court, said (p. 439):

> A constitution, establishing a frame of government, declaring fundamental principles, and

creating a national sovereignty, and intended to endure for ages, and to be adapted to the various crises of human affairs, is not to be interpreted with the strictness of a private contract.

JOHN K. RICHARDS,
Solicitor-General.

JANUARY 31, 1901.

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APPENDIX.

ASSENT OF CONGRESS TO THE ACTS OF STATES LAYING TONNAGE DUTIES, ETC., FROM 1790 TO 1847.

By the act of August 11, 1790 (1 Stat., 184), Congress gave its assent to acts of the States of Rhode Island and the Providence Plantations, Maryland, and Georgia, which levied certain tonnage duties for the purpose of improving harbors, etc., which were to remain in force until January 10, 1791.

By the act of January 10, 1791 (1 Stat., 189), this privilege was continued in force so far as respects Georgia and Rhode Island and the Providence Plantations, for one year and until the end of the next session of Congress.

By the act of February 9, 1791 (1 Stat., 190), Congress gave its assent to an act of Maryland providing for the collection of certain duties for the benefit of the port of Baltimore, by the port wardens, to remain in force for one year and until the then next session of Congress.

The act of March 19, 1792 (1 Stat., 243), continues in force the above acts for the period of three years, and then until the end of the next session of Congress.

The act of June 9, 1794 (1 Stat., 393), assents to an act of Maryland which authorized the health officer at Baltimore to collect a tonnage tax of 1 cent per ton on all vessels coming into that district from foreign voyages. The act was to continue in force until the next session of Congress.

The act of March 2, 1795 (1 Stat., 425), assents to three acts of Maryland levying taxes for improving harbors, etc., they to continue in force until the next session of Congress.

The act of May 12, 1796 (1 Stat., 463), continues in force for three years certain acts of Georgia and Rhode Island and the Providence Plantations, and gives its assent to an act of Maryland, all imposing tonnage duties for the improvement of harbors, etc.

The act of March 27, 1798 (1 Stat., 546), gives assent to an act of Massachusetts giving to certain persons in that State permission to collect tonnage dues for keeping in repair a pier at the mouth of the Kennebunk River.

The act of March 17, 1800 (2 Stat., 18), assents to acts of Maryland and Georgia laying tonnage duties on vessels, for the purpose of improving rivers and harbors, etc., the act to continue in force until March 3, 1808.

The act of February 27, 1801 (2 Stat., 103), assents to act of Maryland which appoints a health officer for the port of Baltimore and lays a duty of 1 cent per ton on all vessels coming into that district, the act to operate for three years and until the end of the next session of Congress thereafter.

The act of April 14, 1802 (2 Stat., 152), assents to an act of Virginia consolidating several acts of that State for improving the Appomattox River.

The act of March 16, 1804 (2 Stat., 269), assents to the act of Virginia providing for the improvement of the James River.

The act of March 1, 1805 (2 Stat., 316), further extends the act of Maryland providing for the appointment of a health officer at Baltimore and

imposing certain tonnage duties for nine years and until after the end of the next session of Congress thereafter.

By the act of February 26, 1806 (2 Stat., 353), Congress assented to an act of Pennsylvania laying a duty of 4 cents per ton on all vessels clearing from Philadelphia for foreign ports, the fund to be used for improving the Delaware River, etc.

The act of March 28, 1806 (2 Stat., 357), grants assent to an act of the State of South Carolina providing for the imposition of a tonnage duty on ships, so far as it extended to authorizing the city of Charleston to levy a duty not exceeding "6 cents per ton on all ships and vessels of the United States which shall arrive from any foreign port or place whatever," to continue for three years and until the end of the next session of Congress thereafter.

The act of April 20, 1808 (2 Stat., 484), assents to the operation of acts of Maryland and Georgia imposing tonnage duties until March 3, 1814.

The act of June 15, 1809 (2 Stat., 549), continues for five years the act of the State of South Carolina authorizing the city of Charleston to collect tonnage duties of vessels of the United States coming from foreign ports.

The act of March 2, 1811 (2 Stat., 658), consents to the act of Georgia which authorizes the collection of duties or fees for the harbor master and health officer at the ports of Savannah and St. Marys, the act to continue in force one year.

The act of March 3, 1813 (2 Stat., 820), assents to the continuance in operation of the last above-recited act for a further period of one year and until the next session of Congress thereafter.

The act of April 16, 1814 (3 Stat., 125), consents to the continuance in force of the acts of Georgia and Maryland (heretofore described) imposing tonnage duties, until March 3, 1822. The act exempts steam vessels carrying passengers.

The act of April 26, 1816 (3 Stat., 301), assents to the act of Virginia incorporating a company for improving the James River from Warwick to Rocketts Landing.

The act of April 29, 1816 (3 Stat., 331), assents to any act of South Carolina now in existence or which may hereafter be passed, authorizing Charleston to collect not exceeding 10 cents per ton on vessels of the United States coming from foreign ports; and to the act of Georgia laying a similar duty of not exceeding 4 cents per ton; the first act for the benefit of sick seamen in the marine hospital, the second for payment of fees of harbor master and health officer at Savannah and St. Marys. The act to continue in force five years and from thence to the end of the next session of Congress.

The act of April 4, 1818 (3 Stat., 417), gives assent to an act of North Carolina for the relief of sick and disabled American seamen, and is to continue in force for five years.

The act of April 20, 1822 (3 Stat., 665), assents to the continuance in force until March 3, 1828, the acts of Maryland and Georgia, imposing certain tonnage duties. But steam vessels carrying passengers are exempted.

The act of May 7, 1822 (3 Stat., 683), continues in force for three years, and to the end of the next session of Congress thereafter, the acts of South Carolina and Georgia, imposing tonnage duties, heretofore recited.

The act of May 13, 1824 (4 Stat., 23), declares the assent of Congress to an act of Alabama authorizing the improvement of the Coosa River, etc.

The act of March 3, 1825 (4 Stat., 94), assents to an act of Virginia for improving the Appomattox River, etc.

The act of March 10, 1828 (4 Stat., 254), assents to the continuance in force until March 3, 1838, of the act of Maryland, imposing tonnage duties on vessels, etc., but excepts steam vessels carrying passengers.

The act of May 24, 1828 (4 Stat., 308), assents to an act of Alabama entitled "An act to incorporate the Catawba Navigation Company."

The act of July 13, 1832 (4 Stat., 573), assents to an act of North Carolina incorporating the "Roanoke Inlet Company," and for other purposes, and to extend to other acts which may thereafter be passed in continuance of these acts, etc.

The act of March 19, 1838 (5 Stat., 215), continues in force the act of Maryland, which imposed certain tonnage duties at the port of Baltimore, until March 3, 1843, but exempts steam vessels carrying passengers, etc.

The act of March 3, 1847 (9 Stat., 204), assents to an act of Virginia incorporating a company to remove the bars in the James River, and authorizing it to collect tolls on vessels navigating the river, Congress reserving the right to terminate its consent at any time.

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